

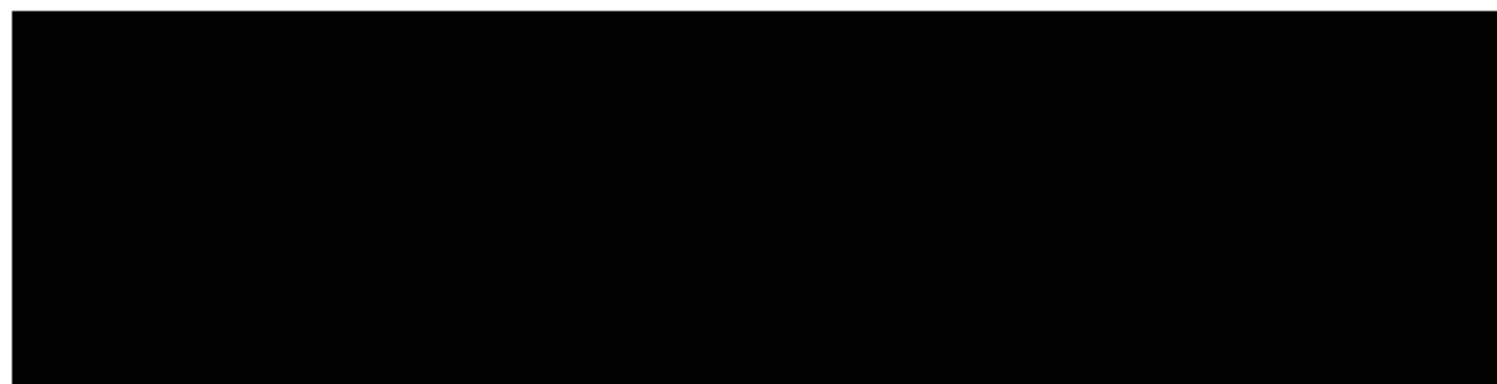
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

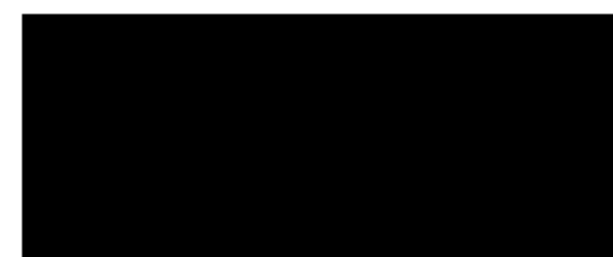


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DATE: JUL 11 2012

OFFICE: NEBRASKA SERVICE CENTER

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IN RE:

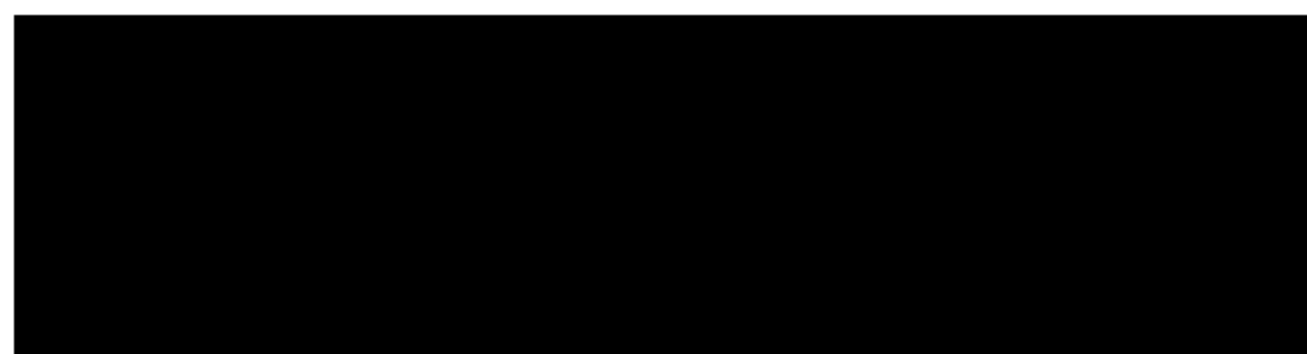
Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center (Director). It is now on appeal before the Chief, Administrative Appeals Office (AAO). The appeal will be sustained, and the petition approved.

The petitioner is a subtitling and translation services business. It seeks to permanently employ the beneficiary as a [REDACTED] and to classify her as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL).

As defined in the regulation at 8 C.F.R. § 204.5(k)(2):

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

The Director denied the petition on the ground that the evidence of record did not establish that the beneficiary had the requisite education, as specified on the ETA Form 9089, to qualify for the proffered position. While documentation had been submitted of two post-secondary credentials that the beneficiary earned in France, which the Director found to be comparable to a bachelor's degree in the United States, there was no documentary evidence of another post-secondary credential claimed by the beneficiary, which the petitioner asserted was equivalent to a U.S. master's degree.

The appeal is properly filed and timely and makes specific allegations of error in law or fact. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its ETA Form 9089, as certified by the DOL and submitted with the instant petition. *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The priority date is the date the labor certification application was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d). In this case the ETA Form 9089 was accepted for processing by the DOL on February 8, 2010.

The education, training, and experience required for the proffered position are set forth in Part H of the ETA Form 9089. Lines 4, 4-B, 7, and 7A specify that a master's degree in communication, film, editing or translation is required to qualify for the job. Line 9 specifies that a foreign educational equivalent is acceptable. In addition, Box 14 states that fluency in French and English is required. In Part J of the ETA Form 9089 the beneficiary claimed that the master's degree requirement was met by a degree in translation and interpretation she earned at the [REDACTED]

The documentation submitted with the petition shows that the beneficiary was awarded a "Licence" in modern literature from the [REDACTED], in France, on January 22, 2002, and a "Maitrise" in modern literature from the [REDACTED] on October 23, 2003. In support of the appeal the petitioner has submitted documentary evidence of the degree claimed in the labor certification – specifically, a photocopied transcript from the [REDACTED], dated December 5, 2005, confirming that the beneficiary completed a set of coursework for the DESS (Diplome d'Etude Superieures Specialisees) program in English translation, specializing in audiovisual adaptation, in 2004-2005.¹ Based on the entire record – including information from the Electronic Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), indicating that a Maitrise is comparable to a bachelor's degree in the United States and a DESS is a one-year post-graduate program comparable to a master's degree in the United States – the AAO determines that the beneficiary's completion of the DESS program in English translation, specializing in audiovisual adaptation, is more likely than not comparable to a U.S. master's degree in the field. The AAO concludes, therefore, that the beneficiary more likely than not meets the requirements specified on the labor certification to qualify for the proffered position. Furthermore, the beneficiary's DESS, as a foreign educational equivalent to a U.S. master's degree, makes the beneficiary eligible for classification as an advanced degree professional under section 203(b)(2) of the Act.

Thus, the petitioner has overcome the Director's ground for denial. The Director's decision will therefore be withdrawn.

The petitioner must also establish its continuing ability to pay the proffered wage from the priority date onward. See 8 C.F.R. § 204.5(d). As previously stated, the priority date in this case was February 8, 2010. Part G of the ETA Form 9089 states that the "wage offered" for the proffered position is \$15.25 per hour – which amounts to \$31,720 per year (based on a work year of 2,080 hours).

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage.

¹ On appeal the petitioner also submitted a photocopy of the beneficiary's first post-secondary credential in France, a "Diplome d'Etudes Universitaires Generales" (DEUG) awarded by the [REDACTED] on March 7, 2000.

Based on the evidence of record – which includes a letter from the petitioner's Controller, Americas, that accords with 8 C.F.R. § 204.5(g)(2), Forms W-2, Wage and Tax Statements, for the years 2008 and 2009 showing that the beneficiary's gross pay from the petitioner well exceeded the proffered wage in each of those pre-priority date years (\$41,928.58 in 2008 and \$39,570.85 in 2009), as well as some earnings statements from the spring of 2010 showing that the beneficiary's gross pay for that year stood at \$16,957.51 (more than half the proffered wage) by June 11, 2010 – the AAO determines that the petitioner has established its continuing ability to pay the proffered wage from the priority date up to the present.

The burden of proof in these proceedings rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

ORDER: The Director's decision of December 3, 2010 is withdrawn. The appeal is sustained. The petition is approved.